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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 ERIC R. TOWNSEL,

10 Plaintiff,

11 v.

12 KEN QUINN, *et al.*,

13 Defendants.

)  
)  
) CASE NO. C07-482-JLR  
)  
)

) ORDER DENYING PLAINTIFF'S MOTION  
) TO PERPETUATE TESTIMONY  
)  
)

14 This is a civil rights action brought under 42 U.S.C. § 1983. This action was originally filed  
15 in April 2007, and a final judgment was entered in this matter in March 2009. The case is currently  
16 on appeal to the United States Court of Appeals for the Ninth Circuit. Plaintiff has presented to this  
17 Court for consideration a motion under Rule 27(b) of the Federal Rules of Civil Procedure to  
18 perpetuate testimony. Plaintiff requests in his motion that this Court both grant *and* conduct  
19 depositions of the defendants in this case pursuant to Rule 27(b). Defendants have filed responses in  
20 opposition to plaintiff's motion<sup>1</sup> and plaintiff has filed a reply brief in support of his motion.

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23 <sup>1</sup> Defendant Munk presented his response to plaintiff's motion to perpetuate testimony in the  
24 form of a motion to strike plaintiff's motion. The Court has considered the substance of defendant  
25 Munk's motion in ruling on plaintiff's motion, and sees no need to independently address defendant  
26 Munk's motion. Defendant Munk's motion to strike (Dkt. No. 174) is therefore STRICKEN from the  
Court's motion calendar.

1 Pursuant to Rule 27(b)(1), where a judgment has been rendered, and an appeal has been  
2 taken, the court where the judgement was rendered may “permit a party to depose witnesses to  
3 perpetuate their testimony for use in the event of further proceedings in that court.” A motion to  
4 perpetuate testimony must specify the expected substance of the testimony being sought and the  
5 reasons for perpetuating the testimony. Fed. R. Civ. P. 27(b)(2). A Court may permit the depositions  
6 to be taken “[i]f the court finds that perpetuating the testimony may prevent a failure or delay of  
7 justice.” Fed. R. Civ. P. 27(b)(3). Plaintiff fails to identify with sufficient specificity the expected  
8 substance of the testimony he seeks or the reasons for perpetuating the testimony. Certainly nothing  
9 in plaintiff’s motion satisfies this Court that perpetuating the testimony is necessary to “prevent a  
10 failure or delay of justice.”

11 Accordingly, this Court does hereby ORDER as follows:

12 (1) Plaintiff’s motion to perpetuate testimony (Dkt. No. 173) is DENIED.

13 (2) The Clerk shall send copies of this Order to plaintiff, to all counsel of record, and to  
14 the Honorable James L. Robart.

15 DATED this 14th day of October, 2009.

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18 Mary Alice Theiler  
19 United States Magistrate Judge  
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